

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, ex rel.** :  
**VALERIA E. GONCALVES, et al.,** :  
 :  
*Relators,* : Case No. 2015-1475  
 :  
v. : **Original Action in Mandamus**  
 :  
**MAHONING COUNTY BOARD OF** :  
**ELECTIONS, et al.,** :  
 :  
*Respondents.* :

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**ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT  
SECRETARY OF STATE JON HUSTED**

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For his Answer and Affirmative Defenses to Relators’ Complaint for a Writ of Mandamus, Respondent Secretary of State (“Respondent”) states:

**ANSWER**

1. The Complaint speaks for itself. To the extent a further response to paragraph one of the Complaint is required, Respondent denies for want of knowledge any remaining allegations.
2. Respondent denies for want of knowledge the allegations contained in paragraph two of the Complaint.
3. Ordinance No. 15-283 speaks for itself. To the extent a further response to paragraph three of the Complaint is required, Respondent denies any remaining allegations for want of knowledge.

4. Respondent denies that the Secretary of State failed to perform any mandatory duties required by law or exceeded his power. Respondent denies for want of knowledge the remaining allegations contained in paragraph four of the Complaint.
5. R.C. 2731.02 speaks for itself. Further, the allegations contained in paragraph five of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
6. Exhibit A speaks for itself. Further, the allegations contained in paragraph six of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
7. R.C. 3501.11 speaks for itself. Further, the allegations contained in paragraph seven of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
8. The allegations contained in paragraph eight of the Complaint call for a legal conclusion for which no response is required. To the extent further answer is required, Respondent denies any remaining allegations.
9. The allegations contained in paragraph nine of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
10. The allegations contained in paragraph ten of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
11. Respondent admits there are less than ninety days remaining until the November 3, 2015 election. Further answering, the allegations contained in paragraph eleven of the

Complaint call for a legal conclusion for which no response is required. Respondent denies any remaining allegations.

12. Respondent denies for want of knowledge the allegations contained in paragraph twelve of the Complaint.
13. Respondent denies for want of knowledge the allegations contained in paragraph thirteen of the Complaint.
14. The allegations contained in paragraph fourteen of the Complaint call for a legal conclusion for which no response is required.
15. Respondent, Jon Husted, admits that David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush are the duly appointed members of the Mahoning County Board of Elections. The remaining allegations contained in paragraph fifteen of the Complaint call for a legal conclusion for which no response is required.
16. Respondent, Jon Husted, admits that he is the Secretary of State for the State of Ohio. Exhibit B speaks for itself. To the extent a further response to paragraph sixteen of the Complaint is required, Respondent admits that, on August 13, 2015, Secretary Husted upheld a protest against proposed county charter petitions filed in Athens, Fulton, and Medina counties made pursuant to R.C. 307.95. Respondent denies for want of knowledge any remaining allegations.
17. Youngstown City Charter Section 120 and Article XVIII, Sections 8 and 9 of the Ohio Constitution speak for themselves.
18. Respondent denies for want of knowledge the allegations contained in paragraph eighteen of the Complaint.

19. Respondent admits that the Mahoning County Board of Elections held a meeting on August 26, 2015, and the Board voted against certifying the proposed charter amendment. Respondent denies for want of knowledge any remaining allegations contained in paragraph nineteen of the Complaint.
20. Paragraph twenty of the Complaint calls for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies the allegations.
21. Paragraph twenty-one of the Complaint calls for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies the allegations.
22. The opinions in *State ex rel. McGovern v. Bd. of Elections* and *State ex rel. Ebersole v. City of Powell* speaks for themselves. Further, the allegations in paragraph twenty-two of the Complaint call for a legal conclusion for which no response is required. To the extent is required, Respondent denies any remaining allegations.
23. The allegations contained in paragraph twenty-three of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
24. The allegations contained in paragraph twenty-four of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
25. R.C. 3501.38 speaks for itself.
26. The opinions in *State ex rel. Kiley v. Summit Cty. Bd. of Elections*, *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, and *State ex rel.*

*DeBrosse v. Cool H* speak for themselves. Further, the allegations contained in paragraph twenty-six of the Complaint call for a legal conclusion to which no response is required. To the extent further answer is required, Respondent denies any remaining allegations.

27. The opinions in *State ex rel. Senn v. Bd. of Elections* and *State ex rel. Clinard v. Greene Cnty.* speak for themselves. Further, the allegations contained in paragraph twenty-seven call for a legal conclusion for which no response is required.
28. The allegations contained in paragraph twenty-eight of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
29. The allegations contained in paragraph twenty-nine of the Complaint call for a legal conclusion for which no response is required.
30. The allegations contained in paragraph thirty of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
31. Respondent denies the allegations contained in paragraph thirty-one of the Complaint.
32. The allegations contained in paragraph thirty-two of the Complaint call for a legal conclusion for which no response is required. To the extent a further answer is required, Respondent denies any remaining allegations.
33. Respondent specifically denies that Relators are entitled to the relief requested in the Prayer for Relief.

34. Respondent denies any and all allegations contained in Relators' Complaint not expressly admitted above. Moreover, all of the case law, other legal authority, and exhibits cited throughout the Complaint speak for themselves.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

35. Relators have failed to state a claim upon which they are entitled to relief from Respondent Secretary of State.

#### **Second Defense**

36. Relators have failed to satisfy the requirements for a writ of mandamus to issue.

#### **Third Defense**

37. Respondent Secretary of State Husted's conduct, to the extent it is at issue in Relators' Complaint, was authorized by law.

#### **Fourth Defense**

38. Respondent Secretary of State Jon Husted is not a proper party to this lawsuit.

#### **Fifth Defense**

39. Relators' claims are barred by laches.

#### **Sixth Defense**

40. Respondent reserves the right to add additional defenses, including additional affirmative defenses, as they may become apparent during the course of this case.

WHEREFORE, having answered Relators' Complaint, Respondent Secretary of State Jon Husted respectfully requests that this Court dismiss it in its entirety, with prejudice.

Respectfully submitted,  
MIKE DEWINE  
Ohio Attorney General

*/s/ Nicole M. Koppitch*

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*Counsel for Respondent*

*Ohio Secretary of State Jon Husted*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Answer and Affirmative Defenses of Respondent Secretary of State Jon Husted* was served by electronic mail or by facsimile transmission on September 9, 2015, upon the following:

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*Counsel for Mahoning County  
Board of Elections and its Members*

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